SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

610

No. 610

ROBERT AUSTIN WATTS,

Petitioner,

vs.

STATE OF INDIANA,

Respondent

BRIEF FOR PETITIONER

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Opinion of Court Below

The opinion of the Supreme Court of Indiana has not been reported officially but appears at Pages 37 to 43 of the printed record.[1] Petition for rehearing was denied on the 11th day of January, 1949, without opinion. (R. 42)

Jurisdiction

Judgment of the Circuit Court of Shelby County, Indiana, was entered on the 28th day of January, 1948 (R. 30-31); affirmed by the Supreme Court of Indiana on the 20th day of December, 1948 (R. 42) and petition for rehearing was over-

[1] Page references "R. —" are to pages in the printed record. Page references "O. R. —" are to pages in the original record.

ruled on the 11th day of January, 1949. (R. 42) Petition for certiorari to review the judgment of the Supreme Court of the State of Indiana affirming the conviction was filed on the 14th day of February, 1949, based upon 28 United States Code, section 1257 and was granted by this Court on the 28th day of February, 1949. (R. 42)

Statement of the Case

Petitioner, a young Negro, was arrested by law-enforcement officers of Marion County, Indiana, on the 12th day of November, 1947, upon suspicion of crime. (O. R. 360, 728) Subsequently, without prior hearing, he was indicted by a grand jury of Marion County for the alleged murder of Mary Lois Burney, a white woman. (R. 1) After arraignment on the 22d day of November, 1947 (R. 1), a motion for change of venue was granted (O. R. 15) to Shelby County, Indiana.

Prior to trial, petitioner moved to quash the indictment returned against him upon the ground that Negroes were systematically excluded from grand jury service in Marion County solely because of their race or color. (R. 2-3) Petitioner further moved to suppress certain alleged confessions obtained from him by state officers through the use of force, duress and intimidation, (O. R. 32-35) and subsequently objected to the admission into evidence of such alleged confessions. (R. 33-34) The trial court overruled these motions (R. 4, 57) and denied petitioner's motion for a new trial in which these errors were specifically preserved. (R. 31-34) Upon appeal to the Supreme Court of Indiana, these two substantial constitutional questions were raised (R. 34-36) and decided adversely to petitioner by the said Court through affirmance of the conviction (R. 37-42) and denial of a petition for rehearing (R. 42).

The material facts concerning the exclusion of Negroes from jury service and the method of obtaining the alleged confession are set forth and discussed in the argument herein.

Errors Relied Upon

A

THE COURT ERRED IN AFFIRMING THE CONVICTION OF PETITIONER, A NEGRO, BASED UPON AN INDICTMENT RETURNED BY A GRAND JURY FROM WHICH NEGROES HAD BEEN SYSTEMATICALLY EXCLUDED SOLELY BECAUSE OF RACE AND COLOR IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

B

THE COURT ERRED IN AFFIRMING THE CONVICTION OF PETITIONER BASED UPON CONFESSIONS OBTAINED BY STATE OFFICERS THROUGH THE USE OF FORCE, DURESS AND INTIMIDATION IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

Summary of Argument

I

Where substantial federal questions have been raised and passed upon in a state court, this Court will make an independent examination of the evidence: *Haley* v. *Ohio*, 332 U. S. 596; *Patton* v. *Mississippi*, 332 U. S. 463; *Malinski* v. *New York*, 324 U. S. 401; *Ashcraft* v. *Tennessee*, 322 U. S. 154; *Ward* v. *Texas*, 316 U. S. 547; *Lisenba* v. *California*, 314 U. S. 219.

II

The lower court erred in affirming the conviction of petitioner based upon an indictment returned by a grand jury from which Negroes were systematically excluded solely because of race or color.

A. Evidence adduced at hearing upon motion to quash clearly established systematic exclusion of Negroes:

Patton v. Mississippi, supra; *Smith v. Texas*, 311 U. S. 128; *Patterson v. Alabama*, 294 U. S. 600; *Norris v. Alabama*, 294 U. S. 587; *Rogers v. Alabama*, 192 U. S. 226; *Carter v. Texas*, 177 U. S. 442; *Bush v. Kentucky*, 107 U. S. 110, 122; *Neal v. Delaware*, 103 U. S. 370; *Strauder v. West Virginia*, 100 U. S. 303.

B. General statements of good faith by state officials were wholly insufficient to overcome evidence of long-continued exclusion of Negroes from jury service: *Patton v. Mississippi*, supra, *Smith v. Texas*, supra.

III

The lower court erred in affirming the conviction of petitioner based upon confessions obtained by state officers through use of force, duress and intimidation.

A. Circumstances surrounding the obtaining of the alleged confessions herein clearly establish their involuntary nature.

B. Use of such confession and affirmance of conviction based thereon violate the Fourteenth Amendment: *Haley v. Ohio*, supra; *Malinski v. New York*, supra; *Ashcraft v. Tennessee*, supra; *Lisenba v. California*, supra; *Chambers v. Florida*, 309 U. S. 227; *Brown v. Mississippi*, 297 U. S. 278.

ARGUMENT

I

This Court will independently examine evidence in support of claim of violation of rights protected by United States Constitution where such claim is properly raised and denied by State Court.

Throughout the proceedings in the courts of Indiana, petitioner claimed that rights protected by the United States Constitution had been denied him because of the systematic exclusion of members of his race from grand juries in the

county where the indictment returned against him was found. (R. 2-3, 31, 34) Petitioner further claimed throughout the proceedings that the use of confessions obtained through the use of force, duress and intimidation by state officers violated rights guaranteed him by the Fourteenth Amendment. (R. 3, 31, 33-34, 35-36) At each stage, these rights were denied by the Indiana state courts. This Court will examine and appraise the evidence as it relates to petitioner's constitutional rights, *Smith* v. *Texas*, supra, at 130, so as to determine the validity of the claim, *Lisenba* v. *California*, supra, at 237, and whether such rights were denied either in express terms or in "substance and effect." *Norris* v. *Alabama*, supra, at 589; *Ward* v. *Texas*, supra, *Malinski* v. *New York*, supra; *Asheraft* v. *Tennessee*, supra; *Haley* v. *Ohio*, supra; *Patton* v. *Mississippi*, supra.

II

The Supreme Court of Indiana erred in denying petitioner the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States by affirming his conviction based upon an indictment returned by a grand jury from which all qualified Negroes were systematically excluded solely because of race or color.

An independent examination of all of the evidence adduced at the hearing upon petitioner's motion to quash will reveal the following uncontradicted facts:

1. That no Negro served on the grand jury that indicted petitioner. (R. 21)

2. That for at least twenty-five to thirty years prior to the indictment of petitioner, no Negro had served on a grand jury in Marion County. (R. 4, 7, 8, 10-11, 12, 17, 21, 27, 30)

3. That Negroes constituted at least one-seventh of the general population of the county in which petitioner was indicted. (R. 4-5, 7, 12, 18)

4. That there were many Negroes in Marion County qualified for jury service. (R. 4, 6, 8, 10)

Petitioner called six witnesses in support of his motion, who testified as follows:

Scotty Scott, a newspaperman and resident of Marion County for seventeen years, testified that of a general population of approximately four hundred and eighty-six thousand (486,000), there are approximately sixty-five thousand (65,000) Negroes[2] and that to his knowledge there are Negroes who are property owners and competent to serve on grand juries, though he does not know of any occasion when Negroes served on a grand jury of that county. (R. 4-6)

Thomas Erwin, a local newspaperman, resident of Marion County for twenty-one (21) years, testified that he had no knowledge of any Negro who had served on a grand jury in the county during that time and confirmed the above-quoted population figures. (R. 7)

William S. Henry, resident for forty-four (44) years, and a member of the Bar of Marion County for thirty-eight (38) years, stated that a total of twelve grand jurors serve each year; that he knows of no Negro who served in such a capacity during the last twenty-five (25) years, though he knows Negroes who are residents, citizens, and property owners of the county. (R. 8-10) Upon being examined by

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[2] 16th Census Report on Population, 1940 shows Marion County, Indiana's general population figures to be: Total population, 460,926; White, 408,890; Negro, 51,949. Table 21, part 2, Vol. II.

the Court concerning Negro grand jurors, the following question and answer were made:

> "Q. Could there have been some called and you not know about it?
>
> "A. No, they couldn't have been, Judge, I have been a lawyer there for thirty-eight years and I would have particularly known that had there been." (R. 9)

Al Magenheimer, Sheriff of Marion County, resident thereof for twenty-five (25) years, testified that he had no knowledge of any Negro serving on a grand jury of the county for the last twenty-five (25) years, though he is well-acquainted with a large number of colored people who own real estate. (R. 10-2)

Glenn W. Parish, Deputy Clerk of Marion County, resident thereof for fifty (50) years, testified that during the last twenty-five (25) or thirty (30) years, he knew of no occasion where a colored person had served on a grand jury, though he knows that a number of colored persons vote and own property in the county. He further stated that the last survey of the Chamber of Commerce showed that of a population of about four hundred and sixty thousand (460,000) persons, sixty-five thousand (65,000) thereof were colored. He also testified that the jury commissioners write out the names of prospective jurors from the tax duplicates, which do not indicate the race of the taxpayer, place the names in a box and that thereafter the County Clerk actually draws the names out of the box and writes them down in the order of drawing. (R. 12-17)

On redirect examination, this witness stated that out of seventy-five (75) names drawn for the grand jury venire at the term of Court at which petitioner was indicted, six (6) jurors were chosen, none of whom was a Negro. (R. 14) He further stated that the Prosecutor of the county helped the judges select the jurors (R. 15) and advised the Court thereon.

Judson L. Stark, prosecuting attorney of Marion County; resident thereof for twenty-five (25) years, testified as to the population ratio of the county and that names of prospective jurors are drawn from the jury box without regard to whether they are white or colored; that the names drawn are written down in order until seventy-five (75) have been so listed, this number then constituting the prospective grand jury list; that subpoenas are then issued to such persons and served by the Sheriff; that upon response to the subpoenas, the prospective jurors are questioned by the judge and that the prosecuting attorney ". . . from time to time looked up the qualifications and ran the records on names so as to be sure we don't get anyone with any bad background in there."; that of three hundred (300) persons serving on grand juries in the county over the past twenty-five (25) years, he does not know of any Negro having so served and that there was no Negro on the grand jury that indicted petitioner. (R. 17-21)

This testimony was sufficient to make a prima facie showing of systematic exclusion of Negroes from grand jury service in Marion County solely because of race or color. *Neal* v. *Delaware*, supra; *Norris* v. *Alabama*, supra; *Pierre* v. *Louisiana*, 306 U. S. 354; *Patton* v. *Mississippi*, supra. As stated by this Court in the *Patton* case, supra:

> "When such a showing was made, it became a duty of the state to try to justify such exclusion as having been brought about by some reason other than racial discrimination."

The State of Indiana failed to sustain the burden. Two witnesses were called by the state in opposition to the motion to quash. One of these witnesses was the prosecuting attorney of Marion County. The other witness was the chief deputy prosecutor of Marion County.

The first witness, Judson L. Stark, prosecuting attorney, had a record of county public service from 1925 and claimed familiarity with the method of selection of grand juries in Marion County. He testified: "There never has been any discrimination or effort to keep names out of the box or keep any colored person in Marion County from serving on either Grand or Petit Jury." (R. 23.) He further testified that: "*I believe* that three were called," in response to a question as to whether any Negroes were called on the grand jury venire within the last three years. (R. 23.) (Italics ours.)

On cross-examination, he stated that at the time of drawing the grand jury that indicted petitioner seventy-five (75) names were drawn from the jury box and of this number some were Negroes (R. 26). However, "when it was finally finished the jury didn't have—there was no colored person on the grand jury" (R. 26-27). It should also be noted that this witness denied that he was present when the names were drawn. (R. 20, 25.)

Glenn W. Funk, chief deputy prosecutor of Marion County since March, 1947, testified that the names of two Negroes were drawn at the January, 1948, term. (R. 29.) This term followed the term of Court at which the grand jury indicting petitioner was drawn. The witness further stated that no Negro had served on a grand jury in Marion County during his residency there since 1927. (R. 30.)

In considering this evidence, the Supreme Court of the State of Indiana found: "There was no proof of a systematic effort to exclude Negroes from jury service", relying therefor on the testimony of Glenn W. Funk to the effect that the names of two Negroes were drawn at the January, 1948, term of the grand jury. Apparently, the Court entirely overlooked or discounted the fact recognized by the trial court that such term followed the court term at which

petitioner was indicted and accordingly such evidence had no bearing upon the motion to quash.

Further, the Supreme Court of Indiana relied in its opinion upon the general assertions of Judson L. Stark and Glenn W. Parish to the effect that there was no discrimination in the selection and drawing of names for service on grand juries. (R. 38.)

Such general assertions of nondiscrimination cannot be considered adequate justification for the complete exclusion of Negroes over a period of twenty-five to thirty years from grand jury service in Marion County. As stated by this Court in *Neal* v. *Delaware*, *supra*:

> "We think that this evidence failed to rebut the strong prima facie case which defendant had made. That showing as to the long continued exclusion of Negroes from jury service, and as to the many qualified for that service, could not be met by mere generalities. If, in the presence of such testimony as defendant adduced, the mere general assertions by officials of their performance of duty were to be accepted as an adequate justification for the complete exclusion of Negroes from jury service, the constitutional provision—adopted with special reference to their protection—would be but a vain and illusory requirement."

Apparently, the Supreme Court of Indiana ". . . regarded as irrelevant the key fact that for thirty years or more no Negro had served on the grand . . . juries. This omission seriously detracts from the weight and respect that we would otherwise give to its conclusion in reviewing the facts, as we must in a constitutional question like this." *Patton* v. *Mississippi*, *supra*.

It is well settled that a Negro defendant is denied equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States whenever through state action Negroes are systematically excluded

solely because of race or color from the grand jury which indicts, or the petit jury which convicts him.

In the *Patton* case, *supra*, the general rule having been reiterated, this Court stated that:

> "When a jury selection plan, whatever it is, operates in such way as always to result in the complete and long-continued exclusion of any representative at all from a large group of Negroes, or any other racial group, indictments and verdicts returned against them by juries thus selected cannot stand." (92 L. Ed. (Adv. Sheets) 164, 167.)

The Indiana Supreme Court refused to apply this principle to the facts of the instant case. Such refusal constituted a denial of petitioner's claim of violation of rights guaranteed him by the Fourteenth Amendment to the United States Constitution within the meaning of decisions of this Court. *Patton* v. *Mississippi*, *supra*; *Pierre* v. *Louisiana*, *supra*; *Hale* v. *Kentucky*, 303 U. S. 613; *Hollins* v. *Oklahoma*, 295 U. S. 394; *Martin* v. *Texas*, 200 U. S. 316.

III

The lower court erred in affirming conviction based upon confessions obtained by State officers through use of force, duress and intimidation.

In the case of *Chambers* v. *Florida*, *supra*, where a conviction based upon confessions induced by fear and duress was reversed, this Court reemphasized the challenging role of our judiciary in such cases, stating:

> "Under our constitutional system, courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are nonconforming victims of prejudice and public excitement. * * * No higher duty, no more solemn responsi-

bility rests upon this Court than that of translating into living law and maintaining these constitutional shields deliberately planned and inscribed for the benefit of every human being subject to our constitution of whatever race, creed, or persuasion" (at p. 241).

In the instant case, the uncontradicted testimony shows that petitioner, a Negro, was arrested on Wednesday, November 12, 1947, some time between 12:30 (O.R. 360) and 2:40 in the afternoon (O.R. 728-729). After questioning by police in the office of the Marion County jail (O.R. 361-362), he was placed in Cell No. 7 (O.R. 446), commonly known as "the hole." (O.R. 363, 447, 581.) This cell, approximately six by four feet, with walls, ceiling and floor made of steel (O.R. 365) or iron (O.R. 448), had a small hole about six by four inches in the front door, which was kept locked (O.R. 365-366), no light (O.R. 448), bed (O.R. 448, 455), chair (O.R. 366), heat (O.R. 567), or water tap (O.R. 366), and its only fixture was a toilet (O.R. 448). After an alleged identification by one Miss Stout, (O.R. 368-371), petitioner was kept in this cell until approximately 11:45 P. M. (O.R. 372).

That night at 11:30 or twelve midnight (O. R. 744), he was removed from the cell, taken first to the jail's front office (O. R. 374), questioned and then taken to headquarters of the state police (O. R. 376), when he was again questioned by various officers until about 2 A. M. on the 13th (O. R. 378-379; 744). From two o'clock until three or four A. M., he was subjected to a lie detector test (O. R. 379, 685, 766) and following this was again questioned by officers until six the next morning (O. R. 381-383), at which time he was returned to "the hole" (O. R. 384).

At 9:30 A. M. on the 13th, petitioner was again removed from his cell (O. R. 385), subjected to an identification proceeding (O. R. 386) then taken in a state police car to

visit various places throughout the city (O. R. 388) until some time in the afternoon (O. R. 395).

During the afternoon, at state police headquarters, until approximately 6:30 the following morning (O. R. 407), he was questioned by a large number of officers (O. R. 403) in at least five different places (O. R. 674-675) and then returned to jail. That morning, the 14th at approximately 9 A. M., he was taken to the prosecutor's office (O. R. 409) where he talked to a man by the name of Lynch (O. R. 410), then taken in an auto to search for various articles (O. R. 411, 609), upon his return he was subjected to a lie detector test (O. R. 414) and again questioned until some time between two (O. R. 610) and eight o'clock the next morning (O. R. 423) at which time he was returned to solitary confinement.

The following morning, the 15th, at 9:30 A. M., he was again taken on an auto trip with officers to various places throughout the city, returned to police headquarters and again questioned until approximately noon (O. R. 423-425). He was taken on another auto trip until approximately 3 o'clock (O. R. 428-429), returned to police headquarters and subjected to a lie detector test (O. R. 429), then returned to solitary (O. R. 436). At approximately six or seven P. M., he was again taken to state police headquarters and questioned until early in the morning some time between 2 (O. R. 431-436) or 8:30 A. M. (O. R. 421), when he was placed again in "the hole," where he was left all day Sunday, the 16th (O. R. 438).

At about 8:30 Monday morning (O. R. 438), he was again taken on an auto trip by state officers (O. R. 613), returned to police headquarters (O. R. 613) and questioned concerning numerous crimes (O. R. 426-437) and subjected to such questioning during the morning (O. R. 439), afternoon (O. R. 439, 1127) and again most of the night (O. R. 439). He finally broke and confessed to having committed the

crime for which he was later charged and sentenced some time between 3 and 4:30 A. M. on the morning of the 18th (O. R. 483).

During all of this period from the 12th through the 18th, petitioner was held without being arraigned or taken before a magistrate for hearing (O. R. 487) as required by the laws of Indiana,[3] until after his confession (O. R. 19-20). The Supreme Court of the state, in its opinion, admitted that this irregularity had occurred (R. 39).

At no time was petitioner advised of his right to remain silent or to have assistance of counsel (O. R. 645-646) nor were friends or relatives allowed to visit him prior to the 18th (O. R. 559, 562). During most of these periods, except while in solitary, and once or twice while in the auto, petitioner was handcuffed (O. R. 374-377, 404).

By reference merely to this undisputed testimony, but one conclusion can be reached, namely, that petitioner's conviction herein must be reversed because it was based upon a confession obtained through the use of force, duress and intimidation, rendering its character involuntary in violation of rights guaranteed him by the Fourteenth Amendment. The facts and circumstances which were uncontradicted establish that the confession was not the result of the free choice of petitioner but rather flowed from the long gruelling questioning and physical exhaustion brought about by state officers while held incommunicado and without due process.

Though the fact alone that a confession was obtained while in the custody of police and in response to examination by them will not necessarily affect its voluntary character, such circumstance will be considered. Also, the fact of an extended delay in arraignment or application to a magistrate for committal, the holding of defendant incom-

[3] Burns Indiana Statutes, 1942 Repl., section 9-704.

incommunicado without opportunity to see counsel or friends, *Ward* v. *Texas*, *supra*; *Malinski* v. *New York*, *supra*, and subjecting him to long and gruelling questioning by a large number of officers; *Ward* v. *Texas*, *supra*, must be considered. All of these facts are present in the instant case and though the conviction may have been based only in part upon the confession obtained in this manner, its use is sufficient to warrant reversal by this Court. *Malinski* v. *New York*, *supra*.

Further testimony, which in some few parts was conflicting, was as follows: Petitioner claims that his clothes were taken away from him and he was kept naked wearing only socks except when removed from the jail (O. R. 367). He further testified that he was beaten by the police (O. R. 399-402, 479) and this is denied by all of them, though petitioner's wife stated that when she saw him after the 18th, his face was swollen and his eyes were red (O. R. 565). Petitioner claims that from arrest to the time he confessed seven days later, the only food he received was four sandwiches (O. R. 415, 489), two bottles of milk (O. R. 415, 489), two apples (O. R. 489), a coca cola (O. R. 364, 404) bread and water (O. R. 438). The only clear contradiction of this was from the sheriff who claims that petitioner was fed regularly, such claim lacking the probability of truth in view of the lengthy periods of time that petitioner admittedly was away from the jail and the custody of the sheriff.

Petitioner further claimed that just prior to signing the confession, he was informed that a mob of five hundred people had gathered to get him (O. R. 443, 481); that unless he signed his wife and baby might be harmed (O. R. 443, 482) and that he did sign only after a telephone call was made to his wife and he was allowed to say "hello" after which the police hung up (O. R. 498). Though these statements are denied by state's witnesses, they are partially

supported by the wife's testimony to the effect that she did receive such a telephone call (O. R. 563).

In reviewing the cumulative evidence, the Supreme Court of the State of Indiana stated:

> "This evidence on admissibility being conflicting, the court's ruling adverse to appellant cannot be questioned in this appeal as we cannot weigh the evidence" (R. 39).

In such ruling, the Indiana Supreme Court entirely ignored the sufficiency of the uncontradicted evidence, giving undue weight to that which was contradicted and thus overruled petitioner's claim of federal right as set forth in his Assignment of Error Number Eighteen presented to that Court, wherein petitioner specifically incorporated his objection "that the said confessions and statements violate . . . the Fifth, Sixth and Fourteenth Amendments to the Federal Constitution" (R. 34). At a minimum, the uncontradicted evidence shows that petitioner was questioned by numerous police officers in various places throughout the city of Indianapolis at all times of the day and night over a period of approximately seven days, with little respite; that during such periods of respite, he was confined in a bare, cold cell with no chair or bed; that during this time he was held illegally and incommunicado without the advice of friends or counsel and constantly subjected to the fear of further and more severe intimidation and coercion.

A confession obtained under such circumstances clearly was not voluntary and its use violates provisions of the Fourteenth Amendment. As stated by this Court in the recent case of *Haley* v. *Ohio*, *supra*:

> "The Fourteenth Amendment prohibits police from using the private, secret custody of either man or child as a device for wringing confessions from them."

Though most decisions concerning the use of coerced confessions dealt with more violent forms of duress, as stated by Mr. Justice Frankfurter in his concurring opinion in the *Haley* case *supra*, at page 246:

> "An impressive series of cases in this and other courts admonishes of the temptations to abuse of police endeavors to secure confessions from suspects, through protractive questioning, carried on in secrecy, with the inevitable disquietude and fears police interrogations naturally engender in individuals questioned while held incommunicado, without the aid of counsel and unprotected by the safeguards of a judicial inquiry. . . . It would disregard standards that we cherish as part of our faith in the strength and well-being of a rational, civilized society to hold that a confession is 'voluntary' simply because the confession is the product of a sentient choice. 'Conduct under duress involves a choice,' (cases cited) and conduct devoid of physical pressure but not leaving a free exercise of choice is the product of duress as much so as choice reflecting physical constraint."

The conviction, based as it is upon a coerced, involuntary confession, should be reversed pursuant to prior decisions of this Court:

> "This Court has set aside convictions based upon confessions extorted from ignorant persons who have been subjected to persistent and protractive questioning, or who have been threatened with mob violence, or who have been unlawfully held incommunicado without advice of friends or counsel, or who have been taken at night to lonely and isolated places for questioning. Any one of these grounds would be sufficient cause for reversal." *Ward* v. *Texas*, 316 U. S. 547, 555.

In the instant case, it is not denied that at least two of these grounds are present, if not all.

Conclusion

Petitioner was indicted by a grand jury from which members of his race were systematically excluded simply because they were Negroes. The record clearly shows further that petitioner's conviction was based upon a confession extorted from him through the use of force, duress and intimidation. The refusal of the Supreme Court of Indiana to reverse the conviction upon the basis of these two federal claims properly presented to it constitutes a violation of rights guaranted petitioner by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, it is respectfully submitted that the judgment of the Supreme Court of the State of Indiana should be reversed.

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